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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 773

LOUIS DAROCA,

Petitioner,

versus

METROPOLITAN LIFE INSURANCE COMPANY, ET AL.,

Respondents.

PETITION OF LOUIS DAROCA FOR WRIT OF CERTIORARI

and

BRIEF IN SUPPORT OF PETITION.

MICHAEL M. IRWIN,
Attorney for Petitioner.

JAS. G. SCHILLIN,
Of Counsel for Petitioner.

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PETITION OF LOUIS DAROCA FOR WRIT OF CERTIORARI

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To the Honorable the Supreme Court of the United States:

Now comes Louis Daroca, a citizen of the United States, residing in the Parish of Orleans, State of Louisiana, and respectfully petitions this Honorable Court to grant a writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit, to remove therefrom, for review here, the record in the cause therein pending, numbered 9557,

wherein petitioner is the appellant and respondents, Metropolitan Life Insurance Company and Travelers Insurance Company, are appellees, and shows:

I.

Metropolitan Life Insurance Company, the owner of an apartment house in New Orleans, had a general contract with J. A. Haase, Jr., Inc., to perform extensive repairs on said apartment house. Haase engaged the painting firm of Frank J. Matthew Co., Inc., under a subcontract to do the painting on said building.

II.

Petitioner, an employee of Matthew, the sub-contractor, while in the performance of his work as painter, and while standing on a scaffold erected along the side of the building adjacent to the *second* floor was struck on the head by a large, heavy window sash, which had become disintegrated and fell from the *fourth* floor, petitioner sustaining a serious fracture of the skull and other major injuries. The mortice or opening into which the tenons fitted became loose and opened wide, permitting the horizontal stiles to fall out, the vertical stile remaining attached to the frame.

III.

Travelers Insurance Company is insurer under a policy protecting Metropolitan, the owner, from liability to anyone injured on said building.

IV.

The general contractor, Haase, having agreed in the building contract to indemnify Metropolitan for any loss or damage occasioned by an accident on said building was called in warranty by Metropolitan, under the Louisiana law and under its express contract obligation, but the call was dismissed by the trial Judge on technical exceptions.

V.

Petitioner brought his action in the United States Court for the Eastern District of Louisiana (New Orleans Division), and Central Surety and Insurance Corporation, workmen's compensation insurance carrier for Matthew, petitioner's immediate employer, intervened to recover back from respondents the amount of compensation already paid, and to be paid, under the Louisiana Workmen's Compensation Law.

VI.

After a jury trial, the trial Court directed a verdict in respondents' favor, which was affirmed by the Circuit Court of Appeals, and petitioner's application for rehearing was denied on September 12, 1941.

VII.

Petitioner avers that the decision of the trial Court and the Circuit Court of Appeals are erroneous, in that said Courts have decided a most important question of local law directly in conflict with the applicable local decisions

and have decided an important question of general law in a way untenable and in conflict, not alone with the general weight of authority, but with prior decisions of the Fifth Circuit, precisely applicable and definitely decisive of the subject matter involved in this petition; that, since denial of rehearing, decision in *Duvernay v. Rossato* (infra, page 10), makes absolutely untenable doctrines announced in case at bar by Fifth Circuit.

VIII.

That petitioner files herewith his brief in support hereof.

IX.

That these questions of local and general law should be finally and authoritatively adjudged by this Honorable Court upon and after a full presentation to this Court of the merits of said questions on the part of petitioner and respondents.

WHEREFORE, petitioner prays that a writ of certiorari may be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding the said Court to certify and send this Court a full and complete transcript of the record and all proceedings of the said Circuit Court of Appeals in said case therein numbered 9557, entitled Louis Daroca v. Metropolitan Life Insurance Company, et al., to the end that said case may be reviewed and determined by this Court as provided in Section 347, Title 28, U. S. Code, and applicable statutes, and that your petitioner may have such other further relief or remedy in the premises as this Honorable Court may deem appropriate

and in conformity with law, and that the judgment of the said Court of Appeals be reversed by this Honorable Court.

And your petitioner will ever pray.

MICHAEL M. IRWIN,
Attorney for Petitioner.

JAS. G. SCHILLIN,
Of Counsel for Petitioner.

AFFIDAVIT.

STATE OF LOUISIANA }
PARISH OF ORLEANS }

Personally came and appeared before me, the undersigned Notary Public, duly commissioned and qualified in and for the Parish of Orleans, State of Louisiana, Louis Daroca, who being duly sworn, deposes and says:

That he is petitioner herein; that he is a resident of the Parish of Orleans, State of Louisiana; that all of the facts contained therein are true and correct, and that as to those facts made on information and belief, deponent verily believes them to be true.

LOUIS DAROCA,
Petitioner.

Sworn to and subscribed before me
this 24th day of November, 1941.

ERASTE VIDRINE,
Notary Public.